

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0232P

Use Tax

Calendar Years 1998, 1999, and 2000

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

At audit, it was determined that the taxpayer failed to self assess and remit use tax for clearly taxable items. In 1998 it self-assessed and remitted eighty-five percent (85%), in 1999 seventy-one percent (71%), and in 2000 eighty-seven percent (87%) of use tax due.

Taxpayer failed to self assess use tax for clearly taxable items such as capital assets, repair parts for equipment, office supplies, uniforms, signs, and other miscellaneous items.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that its vendors are required to charge tax or its branches are required to self-assess use tax. However, this is a manual procedure and a continuous process of training its accounts payable employees. Through the volume of detail, errors occur. Taxpayer further states that one of its branches significantly overpaid the use tax. Taxpayer totally disagrees with the penalty assessment as it makes every attempt to process taxes in an accurate and timely manner and no other state has ever assessed it a penalty.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable

taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to self assess and remit use tax on more than nineteen percent of its purchases and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.